

United States  
Circuit Court of Appeals  
For the Ninth Circuit.

JOSEPH HAYDEN,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record.

UPON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON,  
NORTHERN DIVISION.

FILED

APR 3 - 1930

PAUL P. O'BRIEN,  
CLERK



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Circuit Court of Appeals  
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF COUNSEL.

Messrs. LONG & HAMMER, Attorneys for Appel-  
lant,  
660 Central Bldg., Seattle, Washington.

Messrs. ANTHONY SAVAGE and TOM De-  
WOLFE, Attorneys for Appellee,  
310 Federal Building, Seattle, Washington.

[1\*]

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United States District Court, Western District of  
Washington, Northern Division.

No. 20,083.

JOSEPH HAYDEN,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

COMPLAINT.

The plaintiff complains of the defendant and for  
his cause of action alleges:

I.

That the plaintiff is a resident of the above-named  
judicial district of the United States, to wit, the  
Western District of Washington, Northern Division.

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\*Page-number appearing at the foot of page of original certified  
Transcript of Record.

## II.

That on or about the 19th day of September, 1917, plaintiff was inducted into the military service of the United States of America at Seattle, Washington, and served in Company "H" of the 361st Infantry, and in Company "C" of the 58th Infantry, and was honorably discharged from the army at Camp Lewis, Washington, on or about the 6th day of June, 1919. That on or about the 3d day of December, 1917, he applied for and was issued a policy of war risk insurance in the sum of \$10,000.00, said certificate being numbered 959377, and that thereafter there was deducted from his monthly pay the premium for said insurance. By the terms of said certificate, the defendant agreed to pay the plaintiff the sum of \$57.50 per month in the event of suffering total and permanent disability. [2] Plaintiff paid the premiums on said insurance until August 2, 1919.

## III.

That while plaintiff was in the said military service, and while the said insurance was in full force and effect, plaintiff became totally and permanently disabled from following any substantially gainful occupation on account of injuries received in line of duty; that on or about the 20th day of July, 1918, he was gassed; that on or about the 5th day of October, 1918, he was wounded by a high explosive shell; that at all times since said dates plaintiff has suffered on account of the aforesaid injuries and disabilities. Plaintiff has been informed and believes, and therefore alleges as true



that the aforesaid injuries and disabilities are permanent in their nature, and that he will never recover therefrom. That by reason of the foregoing, plaintiff became totally and permanently disabled from following any substantially gainful occupation and has been informed and believes, and therefore alleges as true that he will always be so disabled, and will never again be able to follow any substantially gainful occupation. By reason whereof, plaintiff became entitled to receive from the defendant the sum of \$57.50 per month from and after October 5, 1918.

#### IV.

That plaintiff has made due proof of said disabilities and demanded the aforesaid payments, but that the defendant has disagreed with him as to his claim and disabilities, and has refused to pay the same, or any part thereof.

WHEREFORE, plaintiff prays judgment against the defendant [3] in the sum of \$57.50 per month, commencing from the 5th day of October, 1918, until the date of rendition of verdict in this case, together with his costs and disbursements herein.

PAUL, LONG & CARLSON,  
Attorneys for Plaintiff.

Office and Postoffice Address:

660 Central Building,  
Seattle, Washington. [4]

State of Washington,  
County of King,—ss.

Joseph Hayden, being first duly sworn, on oath deposes and says: That he is the plaintiff in the above-entitled action, that he has read the foregoing complaint, knows the contents thereof and believes the same to be true.

JOSEPH HAYDEN.

Subscribed and sworn to before me this 6th day of May, 1929.

WM. G. LONG,  
Notary Public in and for the State of Washington,  
Residing at Seattle.

[Endorsed]: Filed May 7, 1929. [5]

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[Title of Court and Cause.]

ANSWER.

Comes now the defendant in the above-entitled matter, by Anthony Savage, United States Attorney for the Western District of Washington, and Jeffrey Heiman, Assistant United States Attorney for said District, and Lester E. Pope, Regional Attorney for the United States Veterans' Bureau, and for answer to the bill of complaint of plaintiff herein admits, denies and alleges as follows, to wit:

I.

For answer to paragraph I of plaintiff's complaint, defendant has not sufficient knowledge or information upon which to form a belief as to the truth or falsity of the allegations therein contained, and, therefore, denies the same.

II.

For answer to paragraph II of plaintiff's complaint, defendant admits that on September 19, 1917, the plaintiff entered the military service of the United States and that he was honorably discharged therefrom on June 6, 1919. It is further admitted that on December 3, 1917, the plaintiff applied for and was granted war risk insurance in the amount of Ten Thousand (\$10,000.00) Dollars, but denies each, every and singular the remaining allegations [6] in said paragraph contained.

III.

For answer to paragraph III of plaintiff's complaint, defendant denies each, every and singular the allegations therein contained.

IV.

For answer to paragraph IV of plaintiff's complaint, defendant admits that a disagreement exists between plaintiff and defendant, but denies each, every and singular the remaining allegations in said paragraph contained.

For a further answer and by way of a First Affirmative Defense, defendant doth allege:

## I.

That on September 19, 1917, plaintiff enlisted in the United States Army and was honorably discharged therefrom on June 6, 1919; that on December 3, 1917, he applied for and was granted War Risk Insurance in the amount of Ten Thousand (\$10,000.00) Dollars payable in monthly installments of \$57.50 each in the event of his death or permanent and total disability occurring while the contract was in force and effect; that premiums were paid on this insurance contract, which is the insurance contract sued upon, to include the month of June, 1919, and that said insurance contract lapsed for the nonpayment of the premium due July 1, 1919, and was not in force and effect thereafter.

WHEREFORE, having fully answered the complaint of the plaintiff herein, defendant prays that the same be dismissed with prejudice, and that the defendant may go hence [7] with its costs and disbursements herein to be taxed according to law.

ANTHONY SAVAGE,  
United States Attorney.

JEFFREY HEIMAN,  
Assistant United States Attorney.

LESTER E. POPE,  
Regional Attorney, U. S. Veterans' Bureau.

United States of America,  
Western District of Washington,  
Northern Division,—ss.

Jeffrey Heiman, being first duly sworn, on oath

deposes and says: That he is Assistant United States Attorney for the Western District of Washington, Northern Division, and as such makes this affidavit on behalf of the defendant herein; that he has read the foregoing Answer and First Affirmative Defense, knows the contents thereof, and believes the same to be true.

JEFFREY HEIMAN.

Subscribed and sworn to before me this 3d day of August, 1929.

[Seal]

T. W. EGGER,

Deputy Clerk, U. S. District Court, Western District of Washington.

Received a copy of the within answer this 2 day of Aug., 1929.

S. F. CHADWICK,  
Attorney for Plaintiff.

[Endorsed]: Filed Aug. 3, 1929. [8]

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[Title of Court and Cause.]

REPLY.

Comes now the plaintiff and replying to the further answer and first affirmative defense of the defendant, denies that said insurance contract lapsed for nonpayment of premium as alleged, or at all, and denies that the said contract was not in force or effect at the time alleged, or at all, and further denies each and every allegation in said affirmative

defense contained, except and only as to such allegations as may be specifically admitted in plaintiff's complaint herein.

PAUL, LONG & CARLSON,  
Attorneys for Plaintiff. [9]

State of Washington,  
County of King,—ss.

Joseph Hayden, being first duly sworn, on oath deposes and says: That he is the plaintiff in the within entitled action; that he has read the foregoing reply, knows the contents thereof and believes the same to be true.

JOSEPH HAYDEN.

Subscribed and sworn to before me this 8th day of August, 1929.

WM. G. LONG,  
Notary Public in and for the State of Washington,  
Residing at Seattle.

Received a copy of the within Reply this 9 day of Aug., 1929.

ANTHONY SAVAGE,  
Attorney for Deft.

[Endorsed]: Filed Aug. 9, 1929. [10]



[Title of Court and Cause.]

NOTICE OF PRESENTATION OF JUDG-  
MENT.

To Joseph Hayden, Plaintiff, and to Paul, Long &  
Carlson, Attorneys for Plaintiff:

You, and each of you, will please take notice that judgment in the above-entitled case, copy of which is hereto attached, will be presented to the above-entitled court for signature on Monday, the 18th day of November, 1929, at which time you may be present if you so desire.

Dated this 13th day of November, 1929.

ANTHONY SAVAGE,  
United States Attorney,  
TOM DeWOLFE,

Assistant United States Attorney.

LESTER E. POPE,

Regional Attorney, United States Veterans' Bu-  
reau.

Received a copy of the within notice this 13 day  
of Nov., 1929.

PAUL, LONG & CARLSON,  
Attorneys for Pltff.

[Endorsed]: Nov. 18, 1929. [11]

United States District Court, Western District of  
Washington, Northern Division.

No. 20,083.

JOSEPH HAYDEN,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

### JUDGMENT.

This matter having come duly and regularly before the above-entitled court on October 17th, 1929, for trial, the jury having been impaneled and the plaintiff having been represented by Paul, Long & Carlson, and the defendant having been represented by Anthony Savage, United States Attorney, Tom DeWolfe, Assistant United States Attorney for the Western District of Washington, and Lester E. Pope, Regional Attorney for the United States Veterans' Bureau, and the plaintiff having adduced its evidence, and the plaintiff having rested, and the defendant having moved for a nonsuit on the grounds that the pleadings failed to make a *prima facie* case, evidence legally insufficient to sustain a verdict, and the defendant's motion having been granted, and the Court being advised in the premises,—

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the



above-entitled action, be, and the same is, hereby dismissed without prejudice, and that the defendant do have and recover of and from the plaintiff herein its costs and disbursements to be taxed according to law.

Done in open court this 18 day of November, 1929.

BOURQUIN,

United States District Judge. [12]

Received a copy of the within judgment this 13 day of Nov., 1929.

PAUL, LONG & CARLSON,

Attorneys for Plaintiff.

[Endorsed]: Filed Nov. 18, 1929. [13]

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[Title of Court and Cause.]

STIPULATION EXTENDING TIME TO AND INCLUDING JANUARY 16, 1930, FOR LODGING PROPOSED BILL OF EXCEPTIONS AND EXTENDING TERM OF COURT.

IT IS HEREBY STIPULATED by and between the parties in the above-entitled action, through their respective attorneys, that the plaintiff herein may have up to and including the 16th day of January, 1930, within which to lodge his proposed bill of exceptions in the above-entitled matter, and

IT IS FURTHER STIPULATED that the present term of court may be deemed to be extended for

that purpose, and for all purposes connected with appeal in the above-entitled cause, and

IT IS FURTHER STIPULATED that the time for preparing, certifying and filing the record on appeal with the Circuit Court of Appeals be extended for a period of thirty (30) days from the date the bill of exceptions is allowed.

Dated at Seattle, Washington, this 25 day of October, 1929.

PAUL, LONG & CARLSON,  
Attorneys for Plaintiff.

ANTHONY SAVAGE,  
United States Attorney.

TOM DeWOLFE,  
Assistant United States Attorney.

LESTER E. POPE,  
Regional Attorney, United States Veterans' Bureau.

[Endorsed]: Filed Oct. 25, 1929. [14]

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[Title of Court and Cause.]

ORDER EXTENDING TIME TO AND INCLUDING JANUARY 16, 1930, FOR LODGING BILL OF EXCEPTIONS AND EXTENDING TERM OF COURT.

This matter having come on duly and regularly before the above-entitled court for hearing upon the application of the plaintiff herein for an order extending the time within which to lodge his proposed bill of exceptions herein, and it appearing to the

Court that both parties in the above-entitled action, through their respective attorneys, have stipulated that the plaintiff herein may have up to and including the first day of Dec., 1929, in which to lodge his proposed bill of exceptions in the above-entitled matter, and that the present term of court may be deemed extended for that purpose, and for all purposes connected with appeal in the above-entitled cause, and further that the time for preparing, certifying and filing the record on appeal with the Circuit Court of Appeals be extended for a period of thirty (30) days from the date the bill of exceptions is allowed, provided immediately brought on for settlement.

IT IS HEREBY ORDERED, that the plaintiff in the above-entitled action may have up to and including the 16th day of January, 1930, in which to lodge his proposed bill of exceptions in the above-entitled matter, and that the present term of court may be deemed extended for that purpose, and for all purposes connected with appeal in the above-entitled cause, and that the time for preparing, certifying and filing the record on appeal with the Circuit Court of Appeals be extended [15] for a period of thirty (30) days from the date the bill of exceptions is allowed as aforesaid.

This 25th day of October, 1929.

BOURQUIN,  
Judge.

Presented by

ARVILLE H. MILLS.

[Endorsed]: Filed Oct. 25, 1929. [16]

[Title of Court and Cause.]

PLAINTIFF'S PROPOSED BILL OF  
EXCEPTIONS.

BE IT REMEMBERED that on the 17th day of October, 1929, at the hour of 3:00 o'clock P. M. the above-entitled and numbered cause came on regularly for trial before the Honorable George M. Bourquin, one of the Judges of the United States District Court, sitting in the above-entitled court at Seattle, in the Western District of Washington.

Wm. G. Long, appearing as counsel for the plaintiff, and Anthony Savage, United States Attorney, Tom DeWolfe, Assistant United States Attorney, and Lester Pope, Regional Attorney for the United States Veterans' Bureau, representing the defendant.

WHEREUPON the following proceedings were had:

A jury was duly empaneled and sworn to try this case, and Wm. G. Long made an opening statement to the jury. The defendant reserved its opening statement. [17]

TESTIMONY OF DR. STEWART V. R.  
HOOKER, FOR PLAINTIFF.

Doctor STEWART V. R. HOOKER, a witness called on behalf of the plaintiff, being duly sworn, testified on

## Direct Examination.

My name is Stewart R. V. Hooker. My occupation is physician and surgeon in Seattle. I have practiced here almost twenty-four years. I am licensed to practice in the State of Washington. I graduated from Harvard. Boston Medical School. Was interne for a year; resident surgeon at the relief station for Boston a year and a half, and since then practicing in this state. I made a thorough examination of the plaintiff in the last few days. I found him suffering from transverse myelitis, which means a lesion of the spinal cord, which more or less paralyzes some muscles and some sensations below the point of lesion. This piece of shell entered the back about the level of the second lumbar vertebra, and evidently destroyed more or less of the nerve tissues. He is unable to walk well. He drags his left foot. There is an area of hypersensitiveness above the lesion, as we usually find in these cases. There is the typical sensation that we find in these cases,—something pulling,—there is a loss of sensation to pin pricks, which is practically total in the right thigh, and a loss of ability to distinguish between heat and cold in the entire right leg and thigh. The left leg can per-



(Testimony of Dr. Stewart V. R. Hooker.)

ceive these different sensations between heat and cold very much better, but in the left leg there is more disability. In the left leg the muscles are more paralyzed. There is the loss of ability to use the left leg. The reflexes, known as knee jerks, are a little increased on both sides. The left is much more increased than the right. The knees, feet, the plantar reflexes, which we get by stroking the sole of the foot, is increased, and there is the Babinsky reaction, which means that the big toe turns up instead of down while the sole is stroked. There is an inch and a quarter difference in the size of the [18] thighs, the left one being smaller than the right. This is because of the paralysis of the muscles of the left leg. There is lack of tone in the muscles,—they have wasted away to a certain extent, while there is still some use of it. The front of the abdomen has a horseshoe shaped scar, which is sensitive because of the nerve in the scar, which was made at the time the shell was extracted. In examining his urine, I find he has some inflammation of the bladder. I had his blood tested for syphilis, and found that absolutely negative. There is no syphilis in the case. I had some X-rays taken, which I have brought with me, which show an injury to the third lumbar vertebra, which was caused undoubtedly by trauma.

Whereupon, Plaintiff's Exhibit 1, an X-ray, was admitted in evidence.

WITNESS.—(Continuing.) This is an X-ray of the spine (indicating) showing part of the dorsal

(Testimony of Dr. Stewart V. R. Hooker.)

spine, the whole of the lumbar spine, and part of the pelvis. We see here in the third lumbar spine that there has been a fissure,—a fracture,—right through there so that this part of the transverse process was loosened. Then we see a little piece here which is not normal, as you notice,—the area on the top of the vertebra is not smooth. Here we have another small piece which was probably broken off at the time of the entry of the shell. You will notice that this transverse spine here is nicely rounded, and has no evidence here of having been broken, and that the entrance of this piece of shell was opposite the second lumbar vertebra here. Therefore, it must have been going downward and inward when it hit, and the injury was to this transverse process. There must have been a tearing of the nerves and a considerable hemorrhage in there. When that sort of thing hit his spine there was more or less of an explosive effect inside of the spinal canal, and hemorrhage, with pressure on that spine, caused great damage to the spinal cord.

[19]

The skin is very sensitive to the touch to any little irritation above the point of injury, and that is practically always present in injuries to the spinal cord. The condition that I found in this man is a constant source of irritation, and makes the person nervous, and his nerves are unstable. There is bound to be pain. In an inner lesion like that there is scar formation which must press on nerves, and the pressure must cause pain. There

(Testimony of Dr. Stewart V. R. Hooker.)

might be pain in any part of the body to which those nerves radiate. It would be practically impossible for him to concentrate or study. It would be impossible for him to engage in physical exertion; because he cannot use his legs sufficiently to do anything requiring it. If he used his arms or any part of his body, he would gradually go downward. He would not last any time. One or two days would probably be his limit on any steady occupation. In my opinion, the same result would follow in occupations involving mental effort. In my opinion he will never be well.

The witness, STEWART V. R. HOOKER, testified further as follows on

Cross-examination.

I am speaking now of the condition I found at the time of my examination. I saw him first this month on the 8th of October, this year. I never saw him before that time. Most of his trouble is due to this transverse myelitis. Transverse myelitis is a lesion of the spinal cord. I found nothing else than this transverse myelitis which would keep him from following many types of gainful occupations. I found the transverse myelitis is practically his only disability.



(Testimony of Dr. Stewart V. R. Hooker.)

The witness, STEWART V. R. HOOKER, testified further as follows on

Redirect Examination.

In my opinion, the cause of the transverse myelitis was [20] due to the fact that he had been hit with this shell. Taking the examination of the patient into consideration and the X-rays, it must have been due to trauma.

TESTIMONY OF O. G. FAIRBURN, FOR PLAINTIFF.

O. G. FAIRBURN, a witness called on behalf of the plaintiff, being first duly sworn, testified as follows on

Direct Examination.

My name is O. G. Fairburn. I am Regional Manager of the United States Veterans' Bureau, Seattle, Washington. I have brought with me the files and records of the United States Veterans' Bureau concerning the plaintiff's case. I have with me the ratings of the Veterans' Bureau, which they have made for his disability since the time of discharge. They are as follows: Temporary partial twenty per cent from the date of separation from active service to April 28, 1921. Temporary partial ten per cent from April 28, 1921, to January 6, 1922. Total temporary from January 6, 1922, to January 30, 1922. Temporary partial ten per cent from January 30, 1922, to June 16, 1922. Per-

(Testimony of Dr. Stewart V. R. Hooker.)

manent total from June, 1922, to date. These ratings of disability are on account of the transverse myelitis. They are on account of the gunshot wound and the transverse myelitis, and made as a result of examination of the doctors of the Veterans' Bureau.

The witness, O. G. FAIRBURN, testified further as follows on

Cross-examination.

The first examination of this man was under date of August 22, 1919, by Dr. A. W. Sibert. There is one before that, I believe, by Dr. A. W. Sibert. The diagnosis which was given was high explosive shell wound. I find no diagnosis of transverse myelitis at that time. The first rating of twenty per cent was made on that condition. The next examination was made on [21] August 29, 1919, signed by the surgeon of the United States Public Health Service. Diagnosis was wound of back. Gunshot. Healed. There was no diagnosis of transverse myelitis made at that time. There was no diagnosis of any nerve disability made either by the examination of August 22d, 1919, or August 29, 1919. The gunshot wound was the only thing found on this examination in the diagnosis. The next examination was made June 14, 1920, by Dr. Paul I. Carter. His diagnosis was wound at back healed. Pes planus,—flat feet. No diagnosis of transverse myelitis or of any nerve disability was made on that examination. The next examination

(Testimony of O. G. Fairburn.)

was made April 28, 1921. The diagnosis was pleuritic adhesions; pes planus bilateral; wound in back; cicatrix of skin; abdominal wall. No transverse myelitis or any nerve disability was found on that examination.

Mr. LONG.—If the Court please, I object to the form of the question. I have no objection to having him ask what the report shows.

The COURT.—Any nerve affection or nerve ailment? What does the report show?

A. The examination report does not show a diagnosis of any nerve ailment or nerve involvement.

The next examination was made June 14, 1921. A chest examination was made May 3, 1921. June 14 was the next general examination made under the direction of the United States Veterans' Bureau. The diagnosis upon that examination was pleuritic adhesions; pes planus second degree; wound of back; cicatrix of skin. Cicatrix of skin means scar. The report does not show any transverse myelitis; nor any nervous condition or ailment or disease.

The witness, O. G. FAIRBURN, testified further as follows on

#### Redirect Examination. [22]

The total permanent rating apparently appears to have been based on the examination of June 27, 1922. The diagnosis shows transverse myelitis; pes planus; gunshot wound on back and abdominal wall healed, also wound contused; sacral plexus

(Testimony of O. G. Fairburn.)

anterior crucial right side, also paralysis traumatic, nerves, sacral plexus right side, also tuberculosis chronic arrested; also myelitis transverse.

The witness, O. G. FAIRBURN, further testified as follows on

Cross-examination.

As far as the records of the Government show, the first diagnosis of transverse myelitis was made on the examination of June 27, 1922. That examination was made by Dr. Calhoun, who is now dead. The history of the development of the disability shown on the report is as follows: "Following gunshot wound October, 1918, lower limbs entirely paralyzed. Gradually got better until a year ago, since which time condition has been stationary until a month ago. At that time began to notice present symptoms and they seem to be gradually growing worse." That report was made June 27, 1922.

TESTIMONY OF JOSEPH HAYDEN, FOR  
PLAINTIFF.

JOSEPH HAYDEN, a witness called on behalf of the plaintiff, being first duly sworn, testified as follows on

Direct Examination.

My name is Joseph Hayden. I am the plaintiff in this case. I am thirty-nine years of age. I never finished the eighth grade. I live at 717-11th

(Testimony of Joseph Hayden.)

Avenue, Seattle, and have resided in Seattle between twenty-five and twenty-eight years. I was in the army on October 5, 1918, in France, with the Fourth Division. On that date I was struck by a piece of high explosive shell and wounded; lay there one day and was *picked the* next morning and taken to the hospital and operated on. I [23] was put in a casual division and sent back to the States, and then to New York, and from there to Camp Lewis, and stayed there at Camp Lewis from March 19 until June 6. I was in the hospital all the time from October, 1918, until the date of discharge. When I came home I did not go to work. I was weak; I had slight pains in the leg and back that gradually disappeared. In a short time they called me to the Veterans' Bureau, and gave me an examination. In six months' time I got a report from Washington, D. C., saying that from date of discharge I would receive total disability. I received Plaintiff's Exhibit 2, marked for identification, from the Treasury Department, Bureau of War Risk Insurance.

Mr. LONG.—We will offer that in evidence, your Honor.

Mr. POPE.—I object to that as incompetent, irrelevant, and immaterial, not properly identified. It is merely a letter, which the Court held was not admissible in the Tracy case.

Mr. LONG.—Note the typewriting on the second paragraph.



(Testimony of Joseph Hayden.)

The COURT.—It is simply a letter advising him of a certain amount.

Mr. LONG.—It says he will draw that as long as the disability continues.

The COURT.—No, I think not. We don't know where the writer drew his information from.

Mr. LONG.—Exception.

I received Plaintiff's Exhibit 3, marked for identification, from Mr. Popwell, Chief of the Bureau of Claims of the Veterans' Bureau at Seattle, Washington.

Mr. LONG.—We will offer that in evidence.

Mr. POPE.—That is objected to as incompetent, irrelevant and immaterial, not the best evidence. We have the records here. [24]

The COURT.—This purports to be a letter stating or reciting something the records show. The records should be produced. If the records are appealed to, the records must be produced. When it comes to show what is on a record, the record must be produced.

Mr. LONG.—Exception.

The COURT.—It will be noted.

I did not do any work at all when I got back from the army during the year 1919. I was suffering slight pain in the legs, weakness. I was able to walk fairly well. I have been nervous ever since the day I got hit in France. I went into training about the latter part of 1919 with the Government. They gave me training in the City Light Substation at Lake Union. They were to teach

(Testimony of Joseph Hayden.)

me how to be a station operator, and all I did there was to sit in an easy chair and they tried to show me some things about switches, and all that, and while not doing that, we were playing cards. I did not do any work. I did not lift a pound. I did not do any work in any other city light plant. I was there two or three months. They transferred me to the Y. M. C. A. They thought maybe I could learn to be a wireless operator. I stayed at that training a few months, three or four maybe. I did no work at that time. Just attended classes. I couldn't seem to grasp wireless telegraphy, and they changed me to something else. They wanted to make me a postal clerk, and sent me to Wilson's Modern Business College in June or July, 1920. I discontinued training there in 1921. During that time I took the examination for a postal clerk, tried it out for a few hours at a time, from one to three hours in the evening. It tired me out. During the year 1921, I worked in the postoffice in the evenings for a short time, one to three hours. [25] That was not regular employment. Adding up all the hours, I would estimate that during the year 1921 I put in probably two or three months, maybe more, maybe less. During this period sometimes I felt quite well, and sometimes not very good. My legs would get numb, and I would go home, and then I would recuperate a bit. If I walked too much, I was in more pain. I noticed that working affected my condition. It affected the legs. They got numb and pained me. During the Christmas rush of 1921 I

(Testimony of Joseph Hayden.)

worked three or four or five days at the postoffice. I would stand it as long as I could, and then I would go out and smoke a few cigarettes and try it again. I didn't feel as good after that week's work. I left the Wilson School in August, 1921, and stayed home. About January, 1922, the Veterans' Bureau called me in for an examination, and they then sent me to Port Townsend hospital. I was there a month under the Veterans' Bureau. From the Port Townsend hospital, I came home. In May I got an appointment from the postoffice as substitute clerk. I went to work and I noticed the more I worked the worse I got, so finally, I think it was the 15th of June, was the last day I worked, and I had a hard time putting the day in, and I went down to the Veterans' Bureau on the 16th, and they sent me to the Providence Hospital. I was there three days, and completely collapsed, and they sent me to Portland, Oregon, on the 29th of June, 1922, as a stretcher case, and I stayed in Portland until August 9, 1923, most of the time in bed. Just prior to the time I went to Providence Hospital, was when I worked for two or three weeks steadily at the postoffice. At that time I got work as a substitute clerk. It was two or three hours, and then the last day I think it was eight hours. Prior to the last day I worked, I didn't really work more than two or three hours a day. The two weeks' work was about \$16.00, at 60¢ an hour. I came home from Portland August 9, 1923. I have not done any [26] work at all since that time. My condition



(Testimony of Joseph Hayden.)

has been very poor. Numbness from the waist down; not very good use of the legs; sort of weak; nervous. I could hardly walk more than two or three blocks from home. There has not been any time since discharge that I have been free from pain, and there has never been any time when I have not been nervous. There has never been a time since discharge that I could concentrate on my work to any degree. I did my best in attempting to work at the postoffice.

The witness, JOSEPH HAYDEN, further testified as follows on

Cross-examination.

I went in training in 1919. First was at the City Light Department, and stayed there for two or three months. They did not seem to keep any track of when I would come and go. There was no one in charge. I was not there every day. I missed some days. I don't think there was any week that I didn't miss some. I cannot say that during October, 1919, I was there eight hours every day, with the exception of Sundays. I don't say it is true. Sometimes I may have stayed eight hours. I don't know just what days I stayed away in November. I would say that I was absent more than three days, excepting Sundays, in November, 1919. Probably two or three days more. I can't swear to it. I had no work to do. They didn't give me anything to do. They didn't ask me to do anything, except

(Testimony of Joseph Hayden.)

to learn the business. I went to the Y. M. C. A. for a few months. It might have been from January, 1920, to May 7, 1920. I was not there practically every day during that period. I was off lots of times. There was no school on Saturday. I would not say that I was there practically every school day. I attended when I could. I missed some days. I tried to go as much as I could. I would not say that I was regular, substantially all the time. I went when I could. When I could not, I stayed at home. I [27] probably attended three or four days a week. I do not remember being absent any week from school. I couldn't say what days I missed or what days I attended in 1920. I must have been absent some days in January, 1920. I don't remember any certain days. I don't remember that in February I attended every day except three days. I wouldn't say that I was absent more than three days. I do not remember that I attended every school day in March, 1920. I do not remember any absences. I don't remember that I attended all the school days in April and May, up to the time I quit. Lots of times I left early. I went home in the afternoons lots of times. They let me go home early lots of times. I didn't do any work at the Y. M. C. A. I was going to school. They didn't ask me to do anything. When I left there I was sent for further training to Wilson's Modern Business College. I think I was there from about July 1, 1920, until about August 7, 1921. The only thing I was studying was a little Arithmetic,

(Testimony of Joseph Hayden.)

Bookkeeping and Penmanship. I did not study any English or Spelling. I did not take the full course. I don't know what the course consisted of. I missed quite a lot of time. I couldn't say that I attended every school day during July, August, September and November of 1920. I don't remember any days that I missed during that period. I don't remember that I attended three-fourths of the month of December, 1920. I don't remember that I attended three-fourths of the month of January, 1921. I was there until August, 1921. I don't know that I attended this school all the school days in March, February and April, 1921. I missed some days sometimes. I couldn't say how many. I don't know that I was present three-fourths of the month of May, 1921. I can't say that I attended one week in August, and was present during June and July, 1921, every school day, except one week in July. I do not remember that I took the Civil Service Examination about December, [28] 1921. My signature is on Government Exhibit No. 4, marked for identification. You have the dates wrong. It is 1920. I made application in 1920. I must have delivered it to the Civil Service Commission in connection with my application. This handwriting filling out the form is mine. I remember an examination by the doctor. I don't know just what time. I don't recall signing it. I must have. It was merely a matter of form. The United States Civil Service Commission kept it. I don't know who got it.

(Testimony of Joseph Hayden.)

Whereupon Government's Exhibit 4, marked for identification—an application for U. S. Civil Service Examination—was admitted in evidence as Government's Exhibit No. 4.

Whereupon Government's Exhibit No. 5, marked for identification attached to Exhibit No. 4, was admitted in evidence as Government Exhibit No. 5.

I think the signature on Government's Exhibit No. 5 is mine. I worked during the Christmas rush of 1921. I had work in the postoffice a total of two or three months in 1921. While I was going to Wilson's Business College, I would work in the evenings from one to three hours, off and on. I would work not over two or three hours, sometimes in the evening in the postoffice while I was attending Wilson's Business College. After I got out of Wilson's Modern Business College, I worked three or four days at Christmas time in the postoffice. I was a substitute. That was after the Civil Service Examination. I did not work when they needed me. I worked when I felt like it. They didn't have any special time. I had no definite assignment of hours. Between August, 1921, and the end of 1921, I worked during the Christmas rush. I did no other work. I may have worked at few hours off and on at the postoffice during February, March and April, 1922. I might have worked [29] for a few hours. The last day I remember of working was the 15th of June, and the next day I went to the hospital. I was discharged June 6, 1919. I paid no premiums on my insurance after discharge from service.

(Testimony of Joseph Hayden.)

The witness, JOSEPH HAYDEN, testified as follows on

Redirect Examination.

After I received total and permanent rating in the month of June, 1922, it carried with it \$100.00 per month.

Q. Now, prior to the time,—that time,—had you been drawing from the Government the amount of money upon a total disability rating?

Mr. POPE.—I object to that as another way of getting around the Court's ruling.

The COURT.—Sustained. Proceed.

Mr. LONG.—Exception.

When I submitted myself for examination to Dr. Turpin, as shown in Government's Exhibit 5, there was a very short examination. I don't know if it was Dr. Turpin who examined me. It seems to me it was a tall, skinny doctor by the name of Edwards. He made no X-rays. He did not examine my back. He did not give me any nerve tests. He did not ask me for any history of my wound. He asked me how I got it. I said, "In service."

The witness, JOSEPH HAYDEN, further testified as follows on

Recross-examination.

I don't remember if Dr. Turpin examined me, but I do remember the examination. I don't remember who examined me. I don't remember what



(Testimony of Joseph Hayden.)

the conversation was. I know what a nerve test is. I never got a nerve test. The only handwriting I signed is right there. (My signature.) I got an eye test, a hearing test, but no nerve test. I didn't go up there to complain. [30] I thought I could make my own living.

Q. Did you complain of any disability that he made an examination for?

A. He didn't get them all.

Q. Did you give him all?

A. That was up to him.

Q. You signed that (showing document)?

A. Yes.

### TESTIMONY OF WILLIAM G. HAYDEN, FOR PLAINTIFF.

WILLIAM G. HAYDEN, called as a witness on behalf of plaintiff, being first duly sworn, testified as follows on

#### Direct Examination.

My name is William G. Hayden. I am a brother of the plaintiff. Since he came home from the army, I have lived at 717-11th Avenue. The plaintiff has lived there, too. I have been in a position to observe his condition during that period, and how he acted around the house. He was very irritable, almost impossible to live with him. He has been that way ever since he came back. He was not that way before. Whenever he worked in the

(Testimony of Mrs. Emma Hayden.)

postoffice, he seemed to be worse. Many times have I observed evidences of his being in pain. I have observed that at all times since he came back.

TESTIMONY OF MRS. EMMA HAYDEN, FOR  
PLAINTIFF.

Mrs. EMMA HAYDEN, a witness called on behalf of the plaintiff, being first duly sworn, testified as follows on

Direct Examination.

My name is Mrs. Emma Hayden. I am the mother of the plaintiff. He has been at my house ever since he came back from the army, except when he was in the hospital. I have observed his nervous condition. He has always been very nervous since he came back from the war. [31]

WHEREUPON, the policy of insurance and disagreement with the Bureau as to plaintiff's claim for payment thereof was conceded by the defendant.

WHEREUPON plaintiff rests his case, and the Government moved for a nonsuit as follows:

Mr. POPE.—The Government at this time moves for an involuntary nonsuit on the ground and for the reason that the evidence adduced for and on behalf of the plaintiff has failed to establish a *prima facie* case and is legally insufficient to sustain a verdict, and that he has not proven any permanent and total disability while the policy of insurance was in force and effect.

THEREAFTER followed argument on the motion by Mr. Pope and Mr. Long.

WHEREUPON the Court rendered an oral opinion granting the motion, and the following proceedings were had:

The COURT.—On the motion for a nonsuit the Court determines whether or not as a matter of law there would be support for a verdict in favor of the plaintiff, provided the jury should so find, and in order to arrive at that determination, the Court must determine the evidence as the jury would under the law and in a light as reasonably favorable to the plaintiff as the evidence will bear.

Now, in this case, it appears that the plaintiff left the army in June, 1919, and at that time he had a policy of insurance in the sum of Ten Thousand Dollars, which provided that if he was killed, or died, or became totally and permanently disabled during the lifetime of the policy, he would recover some fifty-seven [32] dollars a month. After he left the army he paid no more premiums upon his policy. This policy of insurance with the Government is like any other policy with any other life insurance company; it is a contract entered between the insurer and the insured providing that, in consideration that the insured pay so much a month as premiums, if, while the insurance is in force, he becomes totally and permanently disabled, the insurer will pay him the sum provided in the policy. It bears the same relation as the insured and the insurer in any other complaint. However, the plaintiff, departing from the army in July, 1919,



paid no more premiums. Now suit is brought almost ten years later—it was brought in May of this year, ten years less two months—wherein the plaintiff alleges that he left the army in July, 1919, and was totally and permanently disabled, and is and has been all the time since, totally and permanently disabled. Now, if he was permanently disabled, but not totally disabled, that would not entitle him to recover. It is total and permanent disability that entitles him to the money, and unless he was so disabled in July, 1919, if he didn't pay his premiums and failed to keep up his part of the contract, he cannot ask the Government to perform its part.

What is the evidence? He undoubtedly during the war had received a serious wound, and undoubtedly it caused a lesion which affected the spinal cord, muscles and nerves. But the question is: Had it then caused total and permanent disability? It is not enough that he received a wound which, in the course of time, caused total and permanent disability, because the policy expired if he was not totally and permanently disabled at that time [33] when he failed to pay any more premiums, and no after effects of the wound gradually coming on would entitle him to the money. After he left the army in 1919, with the effects of the wound upon him, he came home, and presents evidence that he was examined by many doctors, and this evidence discloses their findings upon examination. He presents that evidence, some of which favors him, and some of it not. He cannot pick and choose, but must take the record as it stands; and he rests his

case upon that testimony. There is no other medical testimony from the time that he left the army, except the doctor who examined him just a short while ago, save the doctor who examined him for the Civil Service Examination and the Veterans' Bureau.

Dr. Hooker says that this present condition is due to the shell, or the shock of the wound, but he does not say that it came on instantly at the time he was struck by the shell. On the contrary, all the evidence shows that it was gradually growing worse until the present condition. The examination of the doctors of the Veterans' Bureau shows their findings that he was twenty per cent disabled. That is a long ways short of total disability. He was examined in April, 1921, two years later—still twenty per cent. He was examined in May, 1921, and was rated temporary partial ten per cent. January, 1922, temporary total from the 6th of January to the 30th of January, 1922, but that was two years after the policy had expired. A little later, in May of that year, ten per cent, and from June, 1922, he has been permanently and totally disabled. There isn't anything to dispute that all of this *time had* been drawing money from the Government, compensation, as a permanently and disabled man, \$100.00 [34] a month. This falls short of proving, under any reasonable consideration of this evidence, that he was totally and permanently disabled from the time that he left the army, because all the medical testimony of that time and up to two years later, which he presents, shows that he was only partially

disabled, twenty per cent, ten per cent, and three years later, totally and permanently disabled.

From all the evidence of the doctors, and that evidence is before the Court, his ailment is entirely due to the shell wound. Nothing said about shell shock. Nervous, yes. We are all nervous, tired, irritable, hard to live with at times, and all through the examinations, twice in August, 1919, in June, 1920, in April, 1921, May, 1921, and until June, 1922, the only ailment was shell wound and flat feet, scar in abdomen showing the wound in the back, and adhesion, on which they gave him this rating.

This plaintiff was unfortunate, if he wanted his insurance, that he didn't keep up his premiums. Apparently, he had no thought himself that he was totally and *permanently*, because he didn't find it necessary to bring his suit until nearly ten years later.

The evidence, as the Court views it, as a matter of law, is wholly insufficient, and if the jury were inclined to return a verdict favorable to the plaintiff on this evidence, the Court would be bound to turn it aside. The motion for a nonsuit is granted. That disposes of the case so far as the jury is concerned (to the jury). You will be excused until Tuesday, ten o'clock.

Mr. LONG.—Please note our exception.

The COURT.—It will be noted. [35]

Received a copy of the within bill of exceptions this 29 day of Nov., 1929.

ANTHONY SAVAGE,  
Attorney for Deft.

Presented by

PAUL, LONG & CARLSON,  
Attys. for Plaintiff.

[Endorsed]: Filed Nov. 29, 1929. [36]

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[Title of Court and Cause.]

### ORDER SETTLING BILL OF EXCEPTIONS.

The above cause coming on for hearing on this day, on the application of the plaintiff to settle his bill of exceptions heretofore duly lodged in this cause, and it appearing to the Court that the time within which to serve and file his bill of exceptions in the foregoing cause has been duly extended, and that said bill of exceptions as heretofore lodged with the Clerk is duly and seasonably presented for settlement and allowance; and it further appearing that said bill of exceptions contains all the material facts occurring upon the trial of the case, together with the exceptions thereto, and all of the material matters and things occurring upon the trial, except the exhibits introduced in evidence, which are hereby made a part of said bill of exceptions by reference and incorporation; and the Court being fully advised, it is by the Court

ORDERED, that the said bill of exceptions be and the same hereby is settled as a true bill of exceptions in said cause, which contains all of the material facts, matters, things and exceptions thereto occurring upon the trial of said cause, and

the same is hereby certified accordingly by the undersigned Judge of this court, who presided at the trial of the said cause, as a true, full and correct bill of exceptions, and the Clerk of the court is hereby ordered to file the same as [37] a record in said cause, and transmit it to the Honorable Circuit Court of Appeals for the Ninth Circuit.

Signed in open court this 11 day of December, 1929.

BOURQUIN,  
United States District Judge.

Presented by:

PAUL LONG & CARLSON,  
Attorneys for Plaintiff.

O. K. and complete and correct.

TOM DeWOLFE,  
LESTER E. POPE,  
Attys. for the United States.

[Endorsed]: Filed Dec. 13, 1929. [38]

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[Title of Court and Cause.]

ORDER ALLOWING CLERK TO TRANSMIT  
ORIGINAL EXHIBITS UPON APPEAL.

This matter having come on duly and regularly before the Court upon the motion of the plaintiff for any order allowing the Clerk in the above-entitled court to transmit with the record on appeal herein the originals of all the exhibits of the plain-



tiff and defendant heretofore filed in this action, and the Court having considered said motion and the affidavit thereto attached, and being duly advised in the premises,—

NOW, THEREFORE, IT IS ORDERED that the Clerk of the court herein be allowed to transmit with the record on appeal the originals of all the exhibits of the plaintiff and defendant heretofore filed in the above-entitled cause.

Done in open court this 23 day of January, 1930.

JEREMIAH NETERER,  
United States District Judge.

Presented by:

ORVILLE MILLS.

O. K.—DeWOLFE,  
Asst. U. S. Atty.

Received a copy of the within order this 23 day of Jan., 1930.

ANTHONY SAVAGE,  
Attorney for Deft.

[Endorsed]: Filed Jan. 23, 1930. [39]

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[Title of Court and Cause.]

PRAECIPE FOR TRANSCRIPT OF RECORD.

To the Clerk of the Above-entitled Court:

You will please send to the United States Circuit



Court of Appeals papers and record on appeal as per attached slip.

LONG & HAMMER,

Attys. for Plaintiffs.

NOTICE—Attorneys will please endorse their own Filings, Rule 11. [40]

1. Complaint.
2. Answer.
3. Reply.
4. Judgment and notice of presentation of judgment.
5. Stipulation and order extending time up to and including December 1, 1929, in which to lodge the bill of exceptions and extending the term of court.
6. Bill of exceptions and order settling bill.
7. Notice of appeal.
8. Petition for appeal.
9. Assignments of error.
10. Order allowing appeal.
11. Bond on appeal.
12. Citation on appeal.
13. Notice of change of firm name of attorneys.
14. All exhibits.
15. This praecipe.

Copy received.

DeWOLFE,

Asst. U. S. Atty.

[Endorsed]: Filed Jan. 21, 1930. [41]

[Title of Court and Cause.]

CERTIFICATE OF CLERK U. S. DISTRICT  
COURT TO TRANSCRIPT OF RECORD.

United States of America,  
Western District of Washington,—ss.

I, Ed. M. Lakin, Clerk of the United States District Court for the Western District of Washington, do hereby certify this typewritten transcript of record, consisting of pages numbered from 1 to 50, inclusive, to be a full, true, correct and complete copy of so much of the record, papers and other proceedings in the above and foregoing-entitled cause, as is required by praecipe of counsel, filed and shown herein, as the same remain of record and on file in the office of the Clerk of said District Court, and that the same constitute the record on appeal herein from the judgment of the said United States District Court for the Western District of Washington to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify the following to be a full, true and correct statement of all expenses, costs, fees and charges incurred and paid in my office by or on behalf of the appellant herein, for making record, certificate or return to the United States Circuit Court of Appeals for the Ninth Circuit in the above-entitled cause, to wit: [42]

Clerk's fees (Act Feb. 11, 1925) for making record, certificate or return, 104 folios at 15¢ .....	\$15.60
Appeal fee (Sec. 5 of Act) .....	5.00
Certificate of Clerk to Transcript of Record, with seal .....	.50
Certificate of Clerk to original exhibits, with seal .....	.50
<hr/>	
Total .....	\$21.60

I hereby certify that the above cost for preparing and certifying record, amounting to \$21.60, has been paid to me by the attorneys for the appellant.

I further certify that I herewith transmit the original citation issued in the above-entitled cause.

IN WITNESS WHEREOF I have hereunto set my hand and affixed the official seal of said District Court at Seattle, in said District, this 5th day of February, 1930.

[Seal] ED. M. LAKIN,  
Clerk of the United States District Court for the  
Western District of Washington.

By S. E. Leitch,  
Deputy. [43]

[Title of Court and Cause.]

CITATION ON APPEAL.

United States of America,  
Western District of Washington,  
Northern Division.

The President of the United States, to the United States of America, Defendant Above Named, and Anthony Savage, Tom DeWolfe and Lester E. Pope, Attorneys for Said Defendant:

You, and each of you, are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals to be held in the city of San Francisco, California, in the Ninth Judicial Circuit Court, on the 14th day of February, 1930, pursuant to order allowing appeal filed in the office of the Clerk of the above-entitled court, appealing from the final judgment signed and filed on the 18th day of November, 1929, wherein Joseph Hayden is plaintiff and the United States of America is defendant, to show cause, if any there be, why the judgment rendered against the said appellant as in said order allowing appeal mentioned, should not be corrected and why justice should not be done to the parties in that behalf.

WITNESSETH, the Honorable JEREMIAH NETERER, United States District Judge for the

Western District of Washington, at Seattle, this  
15 day of January, 1930.

[Seal]

JEREMIAH NETERER,  
United States District Judge.

Received a copy of the within citation this 15 day  
of Jan., 1930.

ANTHONY SAVAGE,  
Attorney for Deft.

[Endorsed]: Filed Jan. 15, 1930. [44]

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[Title of Court and Cause.]

NOTICE OF APPEAL.

United States of America,  
Western District of Washington,  
Northern Division.

To the United States of America, Defendant, and  
Anthony Savage, Tom DeWolfe, and Lester E.  
Pope, Attorneys for Said Defendant:

You, and each of you, will please take notice that  
Joseph Hayden, plaintiff in the above-entitled  
cause, hereby appeals to the United States Circuit  
Court of Appeals for the Ninth Circuit from the  
judgment, decree and order entered in the above-  
entitled cause on the 18th day of November, 1929,  
and that the certified transcript of record will be  
filed in the said Appellate Court within thirty (30)  
days from the filing of this notice.

Received a copy of the within notice of appeal this 9 day of Jan. 1930.

ANTHONY SAVAGE,  
Attorney for Deft.  
PAUL, LONG & CARLSON.  
PAUL and LONG and CARLSON,  
Attorneys for Plaintiff.  
660 Central Building,  
Seattle, Washington.

[Endorsed]: Filed Jan. 10, 1930. [45]

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[Title of Court and Cause.]

#### PETITION FOR APPEAL.

The above-named plaintiff, feeling himself aggrieved by the order, judgment and decree made and entered in this cause on the 18th day of November, 1929, does hereby appeal from said order, judgment and decree, in each and every part thereof, to the Circuit Court of Appeals for the Ninth Circuit, for the reasons specified in the assignment of errors herein; and said plaintiff prays that his appeal be allowed and citation be issued as provided by law, and that a transcript of the record, proceedings and papers upon which said order, judgment and decree was based, duly authenticated, be sent to the United States Circuit Court of Appeals



for the Ninth Circuit, as by the rules of said Court in such cases made and provided.

PAUL, LONG & CARLSON.

PAUL, LONG & CARLSON,

Attorneys for Plaintiff.

Received a copy of the within petition for appeal this 9 day of Jan., 1930.

ANTHONY SAVAGE,

Attorney for Deft.

[Endorsed]: Filed Jan. 10, 1930. [46]

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[Title of Court and Cause.]

#### ASSIGNMENT OF ERRORS OF PLAINTIFF.

Comes now Joseph Hayden, plaintiff in the above-entitled action by Long & Hammer, the attorneys of record, and in connection with his notice of appeal herein and petition for appeal herein, assigns the following errors which he avers occurred at the trial of said case, which were duly excepted to by him and upon which he relies to reverse the judgment herein.

#### I.

That the District Court erred in sustaining defendant's objections to Plaintiff's Exhibit 2 marked for identification purposes, and that said court erred in rejecting Plaintiff's Exhibit 2 when offered in evidence by the plaintiff. That said Plaintiff's Exhibit 2 marked for Identification purposes was

by the plaintiff identified as a document received by the plaintiff from the treasury department, Bureau of War Risk Insurance, and that said Plaintiff's Exhibit No. 2 is in substance a letter from the Treasury Department, Bureau of War Risk Insurance awarding compensation to the plaintiff for disability resulting from injury incurred in the line of duty while employed in active service and that the proceeding with reference [47] to the rejection of said exhibit was as follows:

“Q. Handing you Plaintiff's Exhibit No. 2 marked for identification, I will ask you whether or not you received that document from the Treasury Department, Bureau of War Risk Insurance? A. I did. Yes, sir.

Mr. LONG.—We will offer that in evidence, your Honor.

Mr. POPE.—I object to that as incompetent, irrelevant and immaterial, not properly identified. It is merely a letter, which the Court held was not admissible in the Tracy case.

Mr. LONG.—Note the typewriting on the second paragraph.

The COURT.—It is simply a letter advising him of a certain amount.

Mr. LONG.—It says he will draw that as long as the disability continues.

The COURT.—No, I think not. We don't know where the writer drew his information from.

Mr. LONG.—Exception.”

To which ruling the plaintiff took a separate exception at the time of trial herein.

## II.

That the District Court erred in sustaining defendant's objections to Plaintiff's Exhibit 3 marked for identification purposes, and that the Court erred in rejecting said Plaintiff's Exhibit No. 3 when offered in evidence by the plaintiff. That said Plaintiff's Exhibit No. 3 was by plaintiff identified as a letter received by the plaintiff in the mail from Mr. Popwell, Chief of the Bureau of Claims of the Veterans' Bureau at Seattle, and that said Plaintiff's Exhibit No. 3 is [48] in substance a letter from R. L. Popwell, Chief of the Claims Division in the Regional Office at Seattle, Washington of the United States Veterans' Bureau stating the amount of the award to the plaintiff per month on account of disability, and that the proceedings with reference to the rejection of said exhibit was as follows:

Q. Handing you Plaintiff's Exhibit No. 3, marked for identification, I will ask you what that is?

Mr. POPE.—That speaks for itself.

A. Yes, sir.

Q. You received that from Mr. Popwell, Chief of the Bureau of Claims of the Veterans Bureau at Seattle, Washington?

A. I received that in the mail. Yes, sir.

Mr. LONG.—We will offer that in evidence.

Mr. POPE.—That is objected to as incompetent, irrelevant and immaterial, not the best evidence. We have the records here.

The COURT.—This purports to be a letter stating or reciting something the records show. The records should be produced. If the records are appealed to, the records must be produced. When it comes to show what is on a record, the record must be produced.

Mr. LONG.—Exception.

The COURT.—It will be noted.

To which ruling the plaintiff took a separate exception at the time of trial herein.

### III.

That the District Court erred in sustaining defendant's objection to the following questions asked by the attorney for the plaintiff upon redirect examination. The proceedings [49] with reference to said rulings being as follows:

Q. After you received total and permanent rating in June of 1922, what amount of money did that carry with it?     A. Per month?

Q. Yes.     A. One hundred dollars.

Q. Now, prior to the time,—that time,—had you been drawing from the Government the amount of money upon a total disability rating?

Mr. POPE.—I object to that as another way of getting around the Court's ruling.

The COURT.—Sustained. Proceed.

Mr. LONG.—Exception.

To which ruling the plaintiff took a separate exception at the time of trial herein.

IV.

That the District Court erred in granting defendant's motion for an involuntary nonsuit at the close of the plaintiff's case, and that said Court erred in withdrawing said cause from the jury at the close of the plaintiff's case. To which ruling the plaintiff took a separate exception at the time of trial herein.

LONG & HAMMER.  
LONG & HAMMER,  
Attorneys for Plaintiff.

Received a copy of the within assignment of errors this 9 day of Jan., 1930.

ANTHONY SAVAGE,  
Attorney for Deft.

[Endorsed]: Filed Jan. 10, 1930. [50]

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[Title of Court and Cause.]

ORDER ALLOWING APPEAL.

On the application of the plaintiff herein,—

IT IS HEREBY ORDERED that an appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the judgment heretofore entered and filed herein on the 18th day of November, 1929, be and the same is hereby allowed, with bond in the sum of \$250.

IT IS FURTHER ORDERED that a certified transcript of the record, testimony, exhibits and stipulations, and all proceedings be forthwith transmitted to said United States Circuit Court of Appeals for the Ninth Circuit.

Done in open court this 10 day of January, 1930.

NETERER,

United States District Judge.

[Endorsed]: Filed Jan. 10, 1930. [51]

Bond No. S-18591.

Stock Company.

THE CENTURY INDEMNITY COMPANY,  
Hartford, Connecticut.

KNOW ALL MEN BY THESE PRESENTS:

In the United States District Court, in and for  
the Western District of Washington, Northern  
Division.

No. 20,083.

JOSEPH HAYDEN,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

BOND FOR COSTS ON APPEAL.

KNOW ALL MEN BY THESE PRESENTS:  
That we, Joseph Hayden, the plaintiff above named,  
as principal, and The Century Indemnity Company,



Hartford, Conn., a corporation organized under the laws of the State of Connecticut, and authorized to transact the business of surety, as surety, are held and firmly bound unto United States of America, the defendant above named, in the just sum of Two Hundred Fifty and no/100 Dollars (\$250.00), for which sum, well and truly to be made, we bind ourselves, our and each of our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 13th day of January, 1930.

The condition of this obligation is such, that whereas, the above-named United States of America on the 18th day of November, 1929, in the above-entitled action and court, recovered judgment against the plaintiff above named for the sum of Forty and 75/100 Dollars (\$40.75) for costs, and dismissal of plaintiff's action.

And whereas, the above-named principal has heretofore given due and proper notice that he appeals from said decision and judgment of said United States District Court.

NOW, THEREFORE, if the said principal, Joseph Hayden, shall pay to United States of America, the defendant above named, all costs and damages that may be awarded against plaintiff on the appeal, or on the dismissal thereof, not exceeding the sum of Two Hundred Fifty Dollars

(\$250.00), then this obligation to be void; otherwise to remain in full force and effect.

JOSEPH HAYDEN. (Seal)

By LONG & HAMMER,

His Attorneys.

THE CENTURY INDEMNITY COMPANY.

(Seal)

By E. R. ROBBINS,

Attorney-in-fact.

Signed and sealed in presence of

E. WOODWARD.

O. K.—DeWOLFE,

Asst. U. S. Atty.

Approved:

NETERER,

Judge.

[Endorsed]: Filed Jan. 13, 1930. [52]

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[Title of Court and Cause.]

NOTICE OF CHANGE OF FIRM NAME OF  
ATTORNEYS.

United States of America,  
Western District of Washington,  
Northern Division.

To the United States of America, Defendant, and  
Anthony Savage, Tom DeWolfe and Lester E.  
Pope, Attorneys for Said Defendant:

You and each of you, will please take notice that  
the law firm of Paul, Long & Carlson, attorneys of

record for the plaintiff herein, has been dissolved, and that the name of the successor to said firm is Long & Hammer, and that said Long & Hammer hereafter will appear as the attorneys of record for the plaintiff.

LONG & HAMMER,  
Attorneys for Plaintiff.

[Endorsed]: Filed Jan. 13, 1930. [53]

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[Endorsed]: No. 6073. United States Circuit Court of Appeals for the Ninth Circuit. Joseph Hayden, Appellant, vs. United States of America, Appellee. Transcript of Record. Upon Appeal from the United States District Court for the Western District of Washington, Northern Division.

Filed February 17, 1930.

PAUL P. O'BRIEN,  
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

